

## TITLE TO REAL ESTATE

It is understood by and between the parties hereto that tenant intends to use the building to be constructed by landlords as and for a Kress limited price variety store, plans and specifications for which store buildings are invariably prepared by tenant in order to provide tenant with a building adapted to meet its special needs and requirements.

Because of the present restrictions on building and inability to obtain materials and because of the further fact that the landlord is not hereunder obligated to construct and deliver nor tenant obligated to accept a building until January 1, 1950 or as soon as reasonably possible thereafter, all of the parties hereto agree that it would be impractical and undesirable to attempt to prepare plans and specifications for building to be constructed approximately three years from the date hereof because of the distant possibility and probability that designs of buildings, store fronts and general occupancy requirements may very well vary and change during said time.

Landlords have seen various other store buildings of S. H. KRESS AND COMPANY and know generally the type of building tenant requires for its store purposes and landlords agree that tenant shall be the sole judge of the size, design, plans and specifications of said building provided, however, that said building shall be limited to a two story and basement building with a mezzanine and an air conditioned first floor.

It is agreed that landlord shall be responsible for the erection of said building in accordance with the plans and specifications therefor. Tenant, however, shall have the right, without being under any obligation so to do, to inspect said building at any time and from time to time while same is in the course of construction and to make recommendations to landlord, but nothing herein contained shall impose any obligation on tenant to supervise the construction of said building or relieve landlord of full responsibility for the supervision of same.

Prior to the completion of said new building and as soon as same shall have progressed to a point where tenant can without unreasonably interfering with said construction enter said new premises, tenant is hereby given and granted the right to enter same for the purpose of installing tenant's fixtures, equipment and stock provided, however, that such entry by tenant shall not unreasonably interfere with or delay the building contractor or any sub-contractor in completing said new building.

Landlord shall make all necessary arrangements with contractors and sub-contractors, and all contracts for the construction of said new building subject to this permission and privilege to tenant it being the spirit and intent of this paragraph that landlord and tenant and their agents and employees shall cooperate for the purpose of completing said new building and enabling tenant to open its store for business in the whole of said lease premises at the earliest possible moment subject to the provisions herein contained. Said permission and privilege herein given to tenant for the installation of fixtures, equipment and stock prior to the completion of said new building shall be without charge to tenant and no rent shall be payable or charged until said new building shall be completed and delivered to tenant as herein provided and accepted by tenant and until tenant's store shall have been opened for business in the whole of said leased premises. Moreover, the exercise by tenant of such privilege shall not be deemed an acceptance by tenant of said improvements on said premises or an acknowledgment that same or any part thereof have been completed or are satisfactory to tenant.

Rent for said premises herein leased including the building thereon to be erected by landlord as herein provided shall be as follows:-

A minimum fixed rental of Seven thousand five hundred dollars (\$7,500.00) per year payable in equal monthly installments in advance on the first day of each calendar month during said term, the first payment to be made on the first day of the calendar month following the day on which tenant's store in said entire premises opens for business as herein provided. Said first payment shall also include the proportionate amount of said minimum rental for the period of the previous month during which tenant's store shall have been open for business in said entire premises.

In addition to said minimum rental there shall be paid to landlord in the manner, upon the conditions and at the times hereinafter set forth, an amount, if any, equal to five per cent (5%) of the aggregate gross receipts from sales and services from tenant's business done in or from said leased premises as hereinafter defined and determined less said annual minimum rental.

Tenant agrees four times annually during said term within a reasonable time after the end of each quarter during the months of January, April, July and October respectively to deliver to landlord a written statement showing tenant's gross sales as hereinafter defined in said leased premises during the preceding quarter and to pay to landlord such additional sum, if any, as said five per cent (5%) on gross sales in said leased premises shall amount to during said quarter less monthly installments of said minimum rental paid during such quarter, which amount, if any, shall be deemed additional rent.